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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/656,070 | 09/05/2003 | David Charles Lyons | 12929.1062USC1 | 8343 |
| 23552 | 7590 | 05/04/2005 | EXAMINER | |
| MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903 | | | COCKS, JOSIAH C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3749 | |

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,070

Applicant(s)

LYONS ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27, 29, 30, 32-48 and 50-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-35, 46 and 47 is/are allowed.
- 6) ☒ Claim(s) 27, 29, 30, 32, 36-45, 48, 50, 52, 53, and 55-59 is/are rejected.
- 7) ☒ Claim(s) 51 and 54 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 2/21/2005 is acknowledged.
2. The declarations under 37 CFR 1.132 filed 2/21/2005 are sufficient to overcome the rejection of claims 27, 29, 30, 32, 36-45, 48, 50, 52, 53, and 55-59 based upon 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,941,237 to Shimek in view of US Pat. No. 6,361,725 to Sinsley.

Terminal Disclaimer

3. The terminal disclaimer filed on 2/21/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted from application 09/781,149 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 27, 29, 30, 32, 36-45, 48, 50, 52, 53, and 55-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,941,237 to Shimek ("Shimek '237") (prior art of record) in view of US Pat. No. 3,758,317 to Moore ("Moore").

Shimek '237 discloses the gas burner and methods substantially as described in applicant's claims 27, 29, 30, 32, 36-45, 48, 50, 52, 53, and 55-59. In particular, Shimek '237 shows in Figs. 15-18 a method of forming a gas burner and panel, a method of assembling a fireplace and gas burner for a gas fireplace, comprising:

- a burner panel (14) defining a top surface and a bottom surface;

- a bottom member (17) coupled to the burner panel (14);

- wherein the burner panel (14) defines at least one aperture (20, 48, 63) to provide a gas/air mixture to the top surface of the burner panel (14); and

- wherein the burner panel (14) comprises a molded material that includes an inorganic fiber (vitreous alumina silicate fibers) (see col. 2, lines 11-19); and

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wherein the burner panel (14) comprises a bottom panel of a combustion chamber enclosure (see Fig. 12).

Shimek '237 does not disclose the use of a compression molding method to make the burner panel.

Moore teaches a ceramic shaped refractory for use in household burners and method of forming the refractory (see col. 8, lines 32-35 and 61-69) where compression molding is described as a "useful technique" for forming the panels (see col. 8, lines 45-48).

Therefore, in regard to claims 27, 29, 30, 32, 36-45, 48, 50, 52, 53, and 55-59, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner panel and method of forming of Shimek '237 to incorporate the compression molding method as taught in Moore as this molding method is desirably recognized as a useful technique for forming shaped ceramic parts for household burners (see Moore, col. 8, lines 32-69).

Response to Arguments

7. Applicant's arguments filed 2/21/2005 have been fully considered but they are not persuasive. Applicant argues that there is no motivation to combine the compression molding technique of Moore to form the burner panel of Shimek '237. Applicant further argues that there is no suggestion in Shimek '237 to employ any other molding technique other than pouring a castable slurry into a mold to form a molded article. Applicant also argues that a person of ordinary skill in the art would not understand what constitutes a household burner as recited by Moore or what portions of the burner would be formed by the molding techniques described

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therein. Lastly, applicant argues that though Moore lists numerous molding techniques, including compression molding, and describes these techniques as “all useful” for forming a shaped refractory article these techniques are not equivalent.

These arguments have been carefully considered but are not persuasive. The examiner considers that a person of ordinary skill in the art would reasonably consider the description in Moore of producing shaped refractories for household burners to constitute a teaching to make portions regularly associated with a burner, such as a burner panel for a gas fireplace. In regard to the argument that Moore’s listing of various molding techniques is not properly considered to be an indication of the equivalence of the techniques applicant’s claims, even if the techniques are not considered equivalent Moore provides sufficient motivation to employ any of the listed molded techniques. The recitation by Moore that compression molding, among other molding techniques, is “useful” for creating a shaped refractory article of the type shown in Shimek ‘237 would reasonably suggest to a person of ordinary skill in the art that the use of compression molding would desirably produce a satisfactory portion of a household burner. This motivation is considered by the examiner to be sufficient for combining the teachings of Moore with Shimek ‘237.

Accordingly, applicant’s claims 27-32, 36-45, 48-50, 52, 53, and 55-59 do not distinguish over the prior art of record.

Allowable Subject Matter

8. Claims 33-35, 46, and 47 are allowed.

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9. Claims 51 and 54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
April 28, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749